IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

(1) D.B.CRIMINAL APPEAL NO.587/2005
(Narendra & Ors. Vs. State of Rajasthan)

(2) D.B.CRIMINAL APPEAL NO.943/2005
(Captain Singh Vs. The State of Rajasthan)

D.B. Criminal Appeals under Section 374(2) Cr.P.C. against the judgment dt.31.5.2005 passed by the Additional Sessions Judge, Nohar, District, Hanumangarh in Sessions Case No.76/2001.

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Date of Judgment: August 11, 2006

P R E S E N T

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE R.P.VYAS

Mr.J.R.Beniwal)
Mr.N.S.Rathore)
Mr.R.K.Bohra), for the appellants

Mr.J.P.S.Choudhary, Public Prosecutor

REPORTABLE/-

BY THE COURT: **(PER HON'BLE MR.MATHUR J.)**

1. In these two appeals the appellants viz A/1 Narendra S/o Sita Ram, resident of Hissar(Haryana), A/2 Jogendra @ Bharddin @ Bhar Ahmed S/o Shakhi

Mohammed resident of Borang(Mahan), District, Doda (J&K), A/3 Ajit Singh S/o Shiv Lal, resident of Baliyali, District, Bhiwani(Haryana), A/4 Kaptan Singh S/o Chandu Lal, resident of Samargopalpura, District, Rohtak(Haryana) and A/5 Mukan Lal S/o Bajrang Lal, resident of Anoopshahar, Tehsil, Bhadra, District, Hanumangarh were put to trial on the charge of dacoity along with Asharaf Khan, Rafiq Mohammad, Kan Singh and Ahmed Amir. While the appellants were charged for offence under Section 395 I.P.C. and Section 27 of the Arms Act, the other accused persons since acquitted were charged for offence under Section 395/120-B & 216-A I.P.C. The appellants have been convicted of offence under Section 395 I.P.C. and sentenced to imprisonment for life and to pay a fine of Rs.1000/- each; in default of payment to further undergo 3 months' rigorous imprisonment by judgment dated 31st May 2005 passed by the Additional Sessions Judge, Nohar, District, Hanumangarh.

2. On 1.8.2001 P.W.7 Charan Das A.S.I. Posted at Police Station, Nohar at about 2.50 P.M. received a telephonic information from P.W.1 Ram Kishore to the effect that while he along with the other employees of

Public Health & Engineering Department (PHED) were on way to office from the Bank carrying huge salary sum of the employees, five miscreants looted the amount and escaped in Indica Car. Soon police swing into motion. Police party left in a jeep and P.W.10 Shri Ramgopal Bishnoi, Circle Officer of the Police Station also receiving the information, moved in Gypsy to chase the dacoits. Wireless message was given to the surrounding police stations as also the Police Outposts. Within no time the Indica Car was identified. Seeing the police the dacoits speed up the car. In panic, on Fefana turn the Indica Car lost the balance and dashed against the tree. The occupants of the car came out and started running helter - skelter. The police party in two jeeps chased them. The police jeeps jammed in sand. The police party jumped out and chased the dacoits in the field. The hot chase and the pistol fired by the police officers forced the dacoits to surrender. In the first instance 3 accused persons raised hands and at the same time the other two also surrendered. All the accused persons were arrested red handed. The looted property namely the currency notes were recovered on the spot from the appellants. They

were taken to the police station. During investigation it revealed that the appellants two days before of the incident i.e. on 29th July, 2001 looted and forcibly took away the car bearing No.HR 31-B-5656 involved in the instant case from the Highway leading to Bhiwani (Haryana) from Rajgarh. The car belonged to P.W.8 Dr.Suresh Arya. He lodged F.I.R. Ex.P38 of the incident at Police Station, Bhiwani. They used the said car for committing dacoity removing the number plates. It also revealed that the dacoity was planned by the other local accused persons. Thus, they were charged for offence under Section 395/120-B I.P.C. Incriminating articles were recovered from the possession of the accused persons and the others.

3. A written First Information Report of the incident was lodged by P.W.1 Ram Kishore, Store Munshi (Cashier) posted at Sub Division, Gantheli of PHED. He stated that on the date of incident in the afternoon he along with P.W.2 Sunil Dutt, Store Munshi(Cashier) of Sub Division, Nohar went to the State Bank of Bikaner & Jaipur, Nohar for the collection of the amount of salary to be distributed among the employees of the Department. He carried currency notes in the sum of

Rs.1,67,470/- in a black bag. Sunil Dutt carried currency notes in the sum of Rs.5,78,126/- in another bag. They were also accompanied by P.W.4 Nisar Mohd., Store Munshi and P.W.3 Vikram Singh, Beldar. He stated that at about 2.45 P.M. when they reached near Bihani Guest House all of sudden a Maruti Indica Car of blue colour stopped in front of them. Four persons came out of the car. Two of them were tall whereas other two of medium size. The another person remained sitting on the driving seat. He also gave the description of all the miscreants. The dacoits at the gun point snatched both the bags of currency notes worth Rs. 7,45,596/-. All the five accused persons got into the case and drove away. On this information, police registered a case for offence under Section 395 I.P.C. and proceeded with investigation. After usual investigation police laid charge-sheet against the appellants and others as indicated above.

4. The appellants denied the charges levelled against them and claimed trial. The prosecution in support of the case examined 14 witnesses. The appellants in their statement under Section 313 of the Code of Criminal Procedure denied the correctness of the prosecution

evidence appearing against them. The trial court having found the prosecution case proved convicted and sentenced the appellants in the manner stated above.

5. Assailing the conviction, it is submitted by the learned counsel for the appellants that none of the witnesses in their earlier statements gave any description of dacoits whom they alleged to have identified in the dacoity, nor did the witnesses give any identification marks viz., stature of the accused or whether they were fat or thin or of a fair colour or of black colour. In absence of any such description, the appellants cannot be connected with the alleged crime. Reliance has been placed on a decision of the Apex Court in Wakil Singh & Ors. vs. State of Bihar reported in AIR 1981 SC page 1392. It is also submitted that in the identification parade of the different appellants the same persons from list given by the jail authorities were mixed up. In such circumstances the only added person namely the each appellant could be conveniently identified. The another submission is that while the alleged incident is said to be of 2.45 P.M. and the accused person alleged to have been arrested at 3.15 P.M. while the F.I.R. alleged to have been lodged at

4.02 P.M. Lastly, it is submitted that since it is not a case of dacoity with murder the sentence of imprisonment for life is harsh and the same may be reduced to the minimum period of sentence as provided under Section 395 I.P.C.

6. On the other hand, it is submitted by the learned Public Prosecutor that in the first instance the stature of the appellants has been given in the First Information Report itself. Secondly, this aspect has no significance in the instant case as the accused persons were arrested red handedly. Reliance has been placed on a decision of the Apex Court in State of Rajasthan vs. Sukhpal Singh & Ors. reported in AIR 1984 SC page 207. As to the mixing up of other persons during the identification parade, it is submitted that it was not necessary to change the persons to be mixed up. No prejudice has been caused on this account to the appellants. Regarding the registration of the F.I.R., it is submitted that the information was registered on telephonic information and entered in the Rojnamcha vide Ex.P40-A. As regards sentence it is submitted that no leniency is warranted in the case. The learned Public Prosecutor has shown from the police diary that

appellant Narendra is a convict of offence under the NDPS Act. While he was on parole he committed the instant offence. The learned Public Prosecutor has shown from the police diary that this appellant has been involved in large number of cases. As regards Jogendra it is pointed out that he has given a false identity as Jogendra, his actual name is Ahmed S/o Shakhi Mohammad resident of Borang (Mahan), Police Station, Ramban, District, Doda, State of Jammu & Kashmir. The learned Public Prosecutor has shown from the police diary that there have been other cases registered against him. In one of the case he has looted the arms from a shop at Hissar. There is also material to show that he has been involved in arms smuggling. As regards appellant Mukan Lal, he was involved in a case of assault pertaining to land dispute. In that connection he used to visit the court and he came in contact with one of the appellant Narendra. It is submitted that among all the appellants, Mukan Lal is the local person. At his instance the entire dacoity was planned. He has participated in the dacoity. As regards appellant Ajit Singh, he has been dealing in smuggling of illicit liquor. He was arrested by the Haryana police. While in Jail he came in contact with one Rajesh and through him he

came in contact with one of the appellant Narendra. In connection with another crime he had travelled to Haryana with Narendra and other accused persons. He has a criminal background. The appellant Kaptan Singh is a resident of Samargopalpura, District, Rohtak, State of Haryana. He was a member of the Gang involved in theft of motor vehicles. Cases have been registered against him for the theft of vehicles and dispatching them to Nepal. During investigation it is revealed that he is the master mind in planning the instant dacoity. He had prepared even to commit murder in event of any resistance in commission of dacoity.

7. We have considered the rival contentions and perused the record. P.W.1 Ram Kishore was posted at the relevant time as Store Munshi Cum Cashier in Sub Division, Gantheli, Department of PHED. On the date of incident he had gone to State Bank of Bikaner & Jaipur, Nohar along with Sunil Dutt, Nisar Mohd., and Vikram Singh for withdrawing the amount for disbursement of salary to the employees of Nohar and Gantheli Sub Division of PHED. While he was carrying the authority for the Gantheli Sub Division, P.W.2 Sunil Dutt was carrying for Nohar Sub Division. Both of them had

withdrawn the amount from the Bank. He had withdrawn a sum of Rs.1,67,470/- for disbursement of salary to the employees of Gantheli, Sunil Dutt had withdrawn a sum of Rs.5,78,126/- for disbursement of salary to the employees of Nohar Sub Division. They kept the amount in a ragzine bag. They left the Bank at about 2.30. Whey they reached near Shani Temple, Bihani Guest House abruptly a car stopped in front of them. Four miscreants came out of the car. Two of them were tall and other two of middle stature. The tall man was wearing T-shirt and pent. The another tall man was also bearing pent and T-shirt. The persons of average height was wearing Kurta and Paijama. The other man was wearing pent and shirt. The fifth person remained sitting on the driving seat. Out of the four persons, three were carrying revolvers in their hands. All the four surrounded them. One of them put the revolver at his head. The another dacoit snatched the black bag from the hand of Nisar Mohd. The other dacoit snatched the bag from Sunil Dutt and Vikram. Both the bags were taken by all the four dacoits. The dacoits got into the car and drove away. He along with the others immediately rushed to the office and informed the police on telephone. An information was also given to

the higher authorities in the Department. He also stated that he had identified all the accused persons in the identification parade held on 9.8.2001 before the learned Magistrate. He further stated that he went to the Police Station and submitted the written First Information Report Ex.P1. He has given further details of the investigation. The statements of P.W.2 Sunil Dutt, P.W.3 Vikram Singh and P.W.4 Nisar Mohd. all the employees of the department are almost in the line of P.W.1 Ram Kishore.

8. P.W.5 Bhikha Ram was posted as Assistant Engineer, PHED, Nohar at the relevant time. He stated that the salary in the Sub Division was to be distributed as per the practice on 1st of every month. On 1.8.2001 he had authorised the Cashier of Sub Division, Nohar namely Sunil Dutt and the Cashier of Sub Division, Gantheli P.W.1 Ram Kishore for withdrawing the amount of salary from the Bank. The two other employees namely P.W.3 Vikram Singh and P.W.4 Nisar Mohd. were directed to accompany them. All the four employees at about 3 P.M. returned to the office and reported the incident of dacoity. On his instruction an information was given to the police on telephone. He also directed

P.W.1 Ram Kishore to lodge First Information Report of the incident. He has produced the official documents pertaining to the payment of salary.

9. P.W.6 Hakam Ali is the motbir of various police memos. He did not support the prosecution case as such he was declared hostile.

10. P.W.7 Charan Das was posed as A.S.I. at Police Station, Nohar. He stated that at 2.50 P.M. he received a telephonic message to the effect that the employees of the PHED Department were looted while they were carrying the salary amount. The another A.S.I. P.W.9 Rajendra Prasad informed about the incident to the Circle Officer P.W.14 Tara Chand. The car in which the dacoits escapped, was being chased by police in two separate jeeps. Seeing the police jeeps the dacoits speed up the car. On Bhadra – Fefana turn the car in panic lost the balance and struck against the tree. All the five dacoits got down and ran towards Ramsara. Police Jeeps jammed in sand. Police party jumped out from the jeeps and chased the miscreants in the field. The A.S.I. Rajendra Prasad under the instructions of the Dy.S.P. fired from the pistol to scare the dacoits. In the

circumstances the dacoits were forced to surrender. In the first instance three dacoits surrendered by raising hands. They were arrested on the spot. Later on two other accused persons also surrendered. They were also arrested. A search was made and the incriminating articles were seized.

11. P.W.8 Dr.Suresh Arya deposed that the Indica Car bearing No.HR 31-B-5656, which alleged to have been used in dacoity stood registered in the name of his daughter-in-law Dr.Ekta Arya, the wife of Dr.Amit Arya. His son Dr.Amit Arya was driving the said car while returning from Rajgarh to Hissar. On Siwani crossing at the gun point the car was being looted and taken away by some miscreants. A report of the incident was lodged by Dr.Amit Arya vide Ex.P38. The said vehicle has been delivered to him on Supardgi by the order of the learned Additional Chief Judicial Magistrate, Nohar.

12. P.W.9 Rajendra Prasad was posted as A.S.I. At Police Station, Nohar on 1.8.2001. He stated that on receiving the telephonic information about the dacoity he chased the dacoits with the police party in a jeep. The Circle Officer also joined them in a separate Gypsy.

He has given all the details of the arrest of the accused persons. He has also given the details of the recovery of different articles from the accused persons.

13. P.W.10 Ram Gopal Bishnoi was posted as Circle Officer, Nohar at the relevant time. He stated that on receiving the telephonic information from the Police Station, he chased the dacoits with the police party in a Gypsy. He has also given the details of the arrest of the accused persons and recovery of different articles.

14. P.W.11 Mangal Singh was the Incharge of the Malkhana of Police Station, Nohar at the relevant time. He has given the details of different articles deposited with him by the Investigating Officer. He has stated that all the articles including the packets containing the currency notes were kept intact in the Malkhana.

15. P.W.12 Bhanwar Bhadala, who was posted as Judicial Magistrate, Nohar at the relevant time has given the details of the identification parade and proved the relevant memos.

16. P.W.13 Shivraj was posted as Circle Officer, Sangariya. The investigation was entrusted to him on

8.9.2001. He has given the details of the investigation.

17. P.W.14 Tara Chand was the Incharge of Police Station, Nohar at the relevant time. He has given complete details of the investigation.

18. As already stated the appellants were arrested red handed. The appellants Narendra, Jogendra @ Bhardin @ Bhar Ahmed, Mukan Lal, Ajit and Kaptan Singh were arrested at 3.15 P.M. On 1.8.2001 vide Ex.P24, P25, P26, P27 and P28 respectively. It is stated by P.W.12 Shri Bhanwar Bhadala, Judicial Magistrate, Nohar that an application Ex.P57 was presented before him on 2.8.2001 by the police for arranging identification parade. The summons were issued to the witnesses to participate in the identification parade on 9.8.2001. The identification parade was arranged on 9.8.2001 in Sub Jail, Nohar. He has proved the identification proceedings Ex.P5 wherein appellant Narendra was identified by P.W.1 Ram Kishore, P.W.2 Sunil Dutt, P.W.3 Vikram Singh and P.W.4 Nisar Mohd. Similarly the appellants Jogendra, Mukan Lal, Kaptan Singh and Ajit Singh were identified by the same witnesses in identification proceedings Ex.P6, P7, P8 and P4

respectively. It is stated by P.W.12 Shri Bhanwar Bhadala that the identification proceedings were taken in accordance with the relevant provisions of law.

19. The two fold contentions have been raised challenging the identification proceedings. Firstly, it is argued that none of the witnesses in their earlier statements or in oral evidence gave any description of the dacoits whom they had identified in the dacoity nor did the witnesses gave any identification marks. In absence of such description the appellants cannot be connected with the alleged crime as the possibility of mistaken identification cannot be ruled out. In support of the contention the learned counsel for the appellants has placed reliance on a decision of the Apex Court in Wakil Singh & others' case(supra). We are unable to agree with the submission of the learned counsel as in the first instance it is evident from the reading of the First Information Report itself that the description of the dacoits has been given. It is categorically stated that four persons came out of the car. Out of four, two were tall and other two were of average stature. The description of the clothes which they were wearing was also given. Even otherwise the possibility of mistaken

identification does not arise as the accused persons were arrested red handed within less than half an hour from the time of the incident. The identical contention was rejected by the Apex Court in State of Rajasthan vs. Sukhpal Singh(supra). In the said case on the similar ground a Division Bench of this Court had acquitted the accused persons. The Apex Court while allowing the State appeal reversed the finding, having observed as follows:-

> "The incident which took place in the Bank, the attempt made by the offenders to escape and their pursuit by the police and the public, are but links in the same chain of causation. They are parts of one and the same transaction. This, therefore, **is a case in which the offenders were caught red-handed near the place of offence, while they were trying to escape.**"

20. The second contention as to the mixing up of the same persons is also of no substance keeping in view the fact that the appellants were caught red-handed. Thus, the prosecution has succeeded in establishing the participation of all the appellants in the alleged crime.

21. At the time of arrest of appellant Narendra a country made 315 Bore Pistol and two live cartridges, currency notes of Rs.5000/-, a Mobile, Card and diary

were recovered vide Ex.P30. From appellant Jogendra a 12 Bore Pistol, a live cartridge, a diary and currency notes of Rs.5000/- were recovered vide Ex.P34. From appellant Mukan Lal currency notes worth Rs.1000/-, a black bag containing currency notes of Rs. 5.61.126/- were recovered vide Ex.P33. A 12 Bore Pistol, 17 live cartridges and currency notes of Rs.5000/- were recovered from appellant Ajit vide Ex.P35. Lastly from appellant Kaptan Singh one bag containing currency notes of Rs.1,67,470/- was recovered vide Ex.P36. All the aforesaid recoveries were made while they were arrested in hot pursuit at 3.15 P.M. It is submitted that the Motbirs of the recoveries P.W.6 Hakam Ali has not supported the prosecution and as such he was declared hostile. Simply because P.W.6 Hakam Ali has not supported the prosecution case, the evidence of recovery cannot be discredited. The recoveries have been proved by the statements of P.W.7 Charan Das, P.W.10 Ram Gopal Bishnoi. There is no reason to discredit their testimony.

22. It is significant to notice that the Indica Car was found without number plate. The number plate was recovered vide Ex.P72 in pursuance of the information

given by appellant Narendra vide Ex.P69. It may be stated that P.w.8 Dr.Suresh Arya has stated that on 29th July, 2001 some miscreants had taken away his daughter-in-law's car bearing No. HR 31-B-5656 when his son Dr.Amit Arya was driving the same from Rajgarh to Hissar. This shows that the dacoits had made a preparation at least two days prior from the date of incident. In order to accomplish the same, they took away the car and removed the number plate. The recovery of number plate is an incriminating article pointing towards the guilt of the appellants. The recovery of the fire arms from each appellant shows that they had come armed to commit dacoity. Recovery of Arms and currency notes corroborates the statements of P.W.1 Ram Kishore, P.W.2 Sunil Dutt, P.W.3 Vikram and P.W.4 Nisar Mohd. Appellants have failed to give any explanation about possession of huge currency notes, bearing the seal of the Bank from which the amount was withdrawn and which were looted, while on way.

23. In view of the aforesaid evidence, we are of the view that the prosecution has succeeded in establishing the charges levelled against the appellants. The learned

trial court has rightly convicted the appellants of offence under Section 395 I.P.C.

24. Turning to the sentence, ordinarily we would have reduced the sentence to ten years R.I. But keeping in view the antecedents of each of the appellants which have been brought to our notice by the learned Public Prosecutor, we are not inclined to take any lenient view in the matter. The antecedents of each of the appellants have been noticed by us in Para 5 of this judgment.

25. In view of the aforesaid, we find no merit in the instant appeal, the same stands dismissed. The appellants are in Jail, they will serve out the remaining part of the sentence.

(R.P. VYAS), J. **(N.N.MATHUR), J.**

BKS/-